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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael Rosenbauer

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,759	ROSENBAUER ET AL.	
	Examiner	Art Unit	
	Hanh V. Tran	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-14 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14 and 16-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 8/24/2006.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation in claim 26 of the cover part being formed "substantially in the shape of a peripherally closed rectangle" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claimed subject matter in new claim 26 of the cover part being formed "substantially in the shape of a peripherally closed rectangle.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation in claim 26 of the cover part is formed "substantially in the shape of a peripherally closed rectangle".

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the limitation of the cover part being formed

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"substantially in the shape of a peripherally closed rectangle" is vague, thus indefinite for failing to clearly define the metes and bounds of the claimed invention of what would consider to be substantially in the shape of a peripherally closed rectangle, i.e., how many side parts does it comprise?

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 10-13, 18, 20-21, 23, and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Europe 556,787 to Premoli et al.

Premoli et al discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 7-9, a container body having a plurality of assembled parts, a base frame 1', at least one cover part 22' attached to the base frame part 1', said cover part including a plurality of side parts 23',44, said side parts connected to one another at an angle to form a substantially U-shaped cover part 22' having an open end, the base frame part having a floor part, an upstanding side part 28, corner stays 2a-b, said upstanding side part located in said U-shaped cover part open end completing said cover part, said base frame part 1' and said upstanding side part 28 formed as a unitary assembly, said cover part formed from a corrosion-resistant material, said base frame part including a filter floor part 4(col. 3, lines 53-58); wherein the cover part is attached externally to said at

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least two upstanding corner stays of the base frame, and formed substantially in the shape of a peripherally closed rectangle.

10. Claims 10-11, 18, 20, 22, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,368,379 to Wrangberth.

Wrangberth discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 1-2, a container body including a plurality of assembled parts; a base frame part 10, said base frame part having a floor part 19 and at least two upstanding corner stays 26; and at least one cover part 11 attached to said base frame part, said cover part 11 including a plurality of side parts, said side parts connected to one another at an angle to form a substantially U-shaped periphery of said cover part, said substantially U-shaped periphery of said cover part having an open end and a closed end opposite said open end, and said cover part being attached to said base frame part with its U-shaped periphery mounted on said floor part 19 of said base frame part, such as shown in Fig 2, and said cover part 11 being attached at a respective one of its open end and its closed end to said at least two upstanding corner stays; wherein said cover part 11 is attached internally, Fig 2, to said at least two upstanding corner stays of said base frame part, and formed substantially in the shape of a peripherally closed rectangle.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 14, 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al.

Premoli et al discloses all the elements as discussed above except for (1) claim 14, said base frame part and said upstanding side part unitary assembly formed from a molded plastic material, (2) claim 16, the "peripherally closed rectangle cover part is formed from two substantially L-shaped side parts", (3) claims 17 and 24, the upstanding side part including "additional retention functional elements, including at least one receptacle retention element.

In regard to claim 14 of the base frame part and the upstanding side part formed from a molded plastic material, since molded plastic material is a well known and commercially available product, and it is well known in the art to make parts of a dish-washing machine out of various materials including molded plastic. Therefore, it would have been obvious and well within the level of one skill in the art to modify the base frame part and the upstanding side part of Premoli et al by making them out of an alternate material, i.e., molded plastic material, depending on the desired need of the

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person constructing the parts, such as economic considerations, personal references, material readily available, etc.

In regard to the limitation in claim 16, Premoli et al discloses the claimed invention except for the cover part being formed from two substantially L-shaped side parts, instead of one U-shaped side part. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover part being formed from two substantially L-shaped side parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

In regard to the limitation in claim 17, although Premoli et al does not clearly teach the limitation recited therein of the upstanding side part 28 having at least one receptacle retention element, it would have been obvious and well known in the art to provide the upstanding side part 28 of Premoli et al with at least one receptacle retention element for holding cleaning agent.

14. Claim 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al in view of USP 3,658,075 to Jacobs.

Premoli et al discloses all the elements as discussed above except for at least one of said side parts having a heat exchanger integrated therein.

Jacobs teaches the idea of providing a heat exchanger 60 integrated within a dishwashing machine container for the purpose of improving condensation means. Therefore, it would have been obvious to modify the structure of Premoli et al by providing at least one of said side parts with a heat exchanger integrated therein for the

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purpose of improving condensation means, as taught by Jacobs, since both teach alternate conventional dishwasher structure, used for the same intended purpose, thereby providing structure as claimed.

Response to Arguments

15. Applicant's arguments filed 8/24/2006 have been fully considered but they are not persuasive. In response to applicant's argument on page 8 that the cover part of Premoli is a "unitary monopiece", while the cover part of the invention of the instant application includes "a plurality of side parts connected to one another", the examiner takes the position that (1) the pending claims fail to provide adequate structural limitations in order to distinguish from Premoli; since the pending claims are apparatus claims, and it is well known that a claim drawn to an apparatus must distinguish in terms of structure, (2) even if the cover part of Premoli is a "unitary monopiece", the side parts 23,44 of the cover part must still "connected" to each other to form a "unitary monopiece", and (3) the claimed language fails to clearly define how the side parts are connected to one another, e.g., mechanical means, thermo means, chemical means, etc.

16. In response to applicant's argument on page 8 that the cover part of Wrangberth does not have a U-shaped periphery, the examiner takes the position that the claims fail to provide adequate structural limitations in order to distinguish from Wrangberth, and the cover part of Wrangberth, as stated in the above art rejection, does provide a "U-shaped periphery".

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17. In response to applicant's argument on page 8 regarding Jackson fails to teach a cover part having a plurality of side parts and attached to the base frame part, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Please noted that Jackson is used for the teaching of providing a dish-washing machine with a heat exchanger integrated within the dish-washing container for the purpose of improving condensation means.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*
November 12, 2006

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